MONTANA LEGISLATIVE HISTORY

Chapter 285 1979

Bill H 368 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Jan 29	✓ C	Hearing Date(s)	Mar 09	✓ C
	Feb 06	✓ C			C
		C			C
		C			C
Date Out	Feb 06	✓ C		Mar 09	✓ C.

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____ Report _____

CHAPTER NO. 285

HOUSE BILL NO. 368

INTRODUCED BY DUSSAULT, HUENNEKENS

IN THE HOUSE

January 24, 1979	Introduced and referred to Committee on Judiciary.
February 7, 1979	Committee recommend bill do pass as amended. Report adopted.
February 8, 1979	Printed and placed on members' desks.
February 9, 1979	Second reading, do pass.
February 10, 1979	Considered correctly engrossed.
February 12, 1979	Third reading, passed. Transmitted to second house.

IN THE SENATE

February 13, 1979	Introduced and referred to Committee on Judiciary.
March 9, 1979	Committee recommend bill be concurred in. Report adopted.
March 12, 1979	Second reading, concurred in.
March 14, 1979	Third reading, concurred in.

IN THE HOUSE

March 15, 1979	Returned from second house. Concurred in. Sent to enrolling.
	Reported correctly enrolled.

HOUSE BILL NO. 368

INTRODUCED BY Hannah Gunderson

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE REPORTERS' CONFIDENCE ACT; AMENDING SECTIONS 26-1-902 AND 26-1-903, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 26-1-902, MCA, is amended to read:

"26-1-902. Extent of reporters' privilege. (1) Without his or its consent no person ~~engaged, or who was so engaged at the time the information sought was procured, in the work of or connected with or employed by~~ including any newspaper, magazine, press association, news agency, news service, radio station, television station, or community antenna television service or any person connected with or employed by any of these for the purpose of gathering, writing, editing, or disseminating news may be examined as to or may be required to disclose any information obtained or prepared or the source of that information in any legal proceeding if the information was gathered, received, or processed in the course of his employment.

(2) A person engaged as in subsection (1) may not be adjudged in contempt by a judicial, legislative, administrative, or any other body having the power to issue subpoenas for refusing to disclose or produce the source of any information or for refusing to disclose any information obtained or prepared in gathering, receiving, or processing information in the course of his ~~employment~~ or its business."

Section 2. Section 26-1-903, MCA, is amended to read:

"26-1-903. Waiver of privilege. (1) Dissemination, except as provided in subsection (2), in whole or in part does not constitute a waiver of provisions of 26-1-902.

(2) If the person claiming the privilege voluntarily offers to testify, with or without having been subpoenaed, before a judicial, legislative, administrative, or other body having the power to issue subpoenas, he or it waives the provisions of 26-1-902. Except as provided in this subsection, the provisions of 26-1-902 may not be waived."

-End-

House Judiciary

section to section 4. It won't hurt the bill if you take that language out. He added that that language was added to conform in section 2 with section 3. The reason for subsection 4 is to make it clear you cannot avoid the open meeting law by appointing someone to do their deliberating for them.

There was general discussion about rights of boards and the minutes of a meeting and a closed meeting, and Mr. Meloy said that the minutes in a closed meeting must also be kept closed.

Representative Kemmis stated that there are two distinct sections that talk about the right of privacy, page 2 and page 3 that seem to address the same topic and I wonder why subsection 2 was not amended to include that section. Mr. Meloy said that could be incorporated very easily.

Representative Kemmis asked Chad Smith several questions about his testimony. Mr. Smith said that in some cases the board had to take responsibility to close a meeting.

Representative Keedy asked Mr. Smith If the publics right to be informed of meetings of public bodies and agencies how is that going to be possible unless the public is aware a meeting is taking place. Mr. Smith said that he did not know what reasonable notice is and that it must be defined. Lets set up a simple uniform notice provision.

Representative Keedy asked what is the intent of the new section on page 3. Some general discussion followed this and there were no further questions and the hearing closed on House Bill 345.

HOUSE BILL NO. 368: Representative Dussault, as the sponsor of the bill a reporter may not be forced to disclose any information obtained or prepared or the source of that information disclosed if the information was gathered, received, or processed in the course of his employment. In 1977 the statute was amended. She talked of the recent decision by the Montana Supreme Court. That protection does not extend to the reporter. She explained what the Supreme Court had said and explained the bill. This bill would clarify the coverage of the reporters confidence act.

MIKE MELOY: Press Association. I believe that Representative Dussault has explained the bill and what it will do very well. He discussed the Rector case in Eureka. The judge in this case decided that it only applied to the newspaper reporter but not the agency. The distinction there is

very carefully drawn one. He went on and talked of the reporter and the agency and the point of distinction.

RON SEMPLE: Independent Record. At any time that a newspaper does not check anonymous sources there is a conflict of the credibility of the source. He went on to talk about the credibility of the sources. The access to judgment has been cut off from reporters, the only thing the newspaper management has is his experience and judgment. You should afford the same shield protection as you do to the reporter.

BILL MERRICK: Montana Broadcasters. We have a different situation than you find in the press. But, if a newsman has confidential sources he can't reveal them at all. He went on to say that Senator Stan Stevens, a broadcaster is in full support of the bill.

FRED LARK: MBA. I beleive that it is imperative that we have this protection. He talked about the regulations they had to adhere to, the federal as well as the state. We are talking about being a professional broadcast journalist and how you are going to inform the public.

ROB BURNS: Television Bureau. We support this bill.

Representative Kemmis asked about the change at the top of page 2. Could they be asking to waive this testimony by offering to produce. There was some discussion about this aspect.

Representative Daily said that in his mind House Bill 345 and 368 seemed to be in conflict and wanted them explained and what the contrast was. After this was done and there was no further discussion the hearing closed on House Bill 368.

HOUSE BILL NO. 390: Representative Teague, this is a simple little bill. He mentioned a case in New Yourk as the reason for this bill. I feel there is a limit that should be placed on some of these freedoms. I believe in freedom of the press but I want to make one point before I go on. I believe the judges discretion should be brought into it and decide if the evidence is of an absolute nature.

REPRESENTATIVE CURTISS: I have a copy of a statement made by Carl Rieckmann, the publisher of the Tobacco Valley News at Eureka. The statement pertains to both HB's 389 and 390. (copy attached)

separate, and deal with each bill by itself.

HOUSE BILL NO. 368: Representative Kemmis moved to amend. He presented the committee with copies of the prepared amendments. The motion carried with the vote unanimous. Representative Kemmis moved a new section one. The motion carried with the vote unanimous. (copy attached)

Representative Kemmis moved to amend the title, and the motion carried with Bepresentative Conroy voting "no".

Representative Uhde moved to amend page 1, line 11 and line 13 by striking "person" and "any". There was disagreement and much discussion and Representative Uhde withdrew his motion.

The question was called and the "do pass as amended" carried with the vote 10 to 7 on a roll call vote. Representative Pavlovich did not vote. He was carrying a bill in another committee.

HOUSE BILL NO. 390: Representative Kemmis presented the prepared amendments from the sub-committee. There was discussion about the amendments. The motion to adopt the amendments was made by Representative Kemmis and the motion carried with the vote unanimous.

Representative Teague moved "do pass as amended". The motion carried with Representatives Conroy, Seifert, Uhde, Keedy, Kemmis and Holmes voting "no". Representative Rosenthal did not vote because he said he was still undecided about the bill.

HOUSE BILL NO. 447: Representative Seifert moved "do not pass". Representative Lory offered a substitute motion to "postpone until the 47th day". The motion carried with the vote unanimous.

HOUSE BILL NO. 355: Representative Scully explained the status of the bill since the 3 sections had been repealed by a code bill, 27-1-815, 27-1-816, and 27-1-817. The section being amended is 27-1-814.

Representative Keyser moved the committee draft a committee bill and incorporate the repealed sections and add the new section, which is the substance of House Bill No. 355. The motion carried with Representative Kemmis voting "no".

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 9, 1979

The fifty-fifth meeting of the Senate Judiciary Committee was called to order by Senator Everett R. Lensink in room 331 of the capitol building on the above date at 9:32 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF HOUSE BILL 697:

This is an act to revise and clarify the procedure for revocation or suspension of medical licenses and to provide venue in Lewis and Clark County, etc. Representative Day gave an explanation of this bill.

Jerome Loendorf, representing the Montana Medical Association, gave a statement in support of this bill. He said that this would save the board money and he said that all the cases have been heard here except one and that cost $40,000.00. He said there is considerable expense to move records, staff, court reporters , etc.

There were no further proponents and no opponents.

Senator Brown questioned if there were any objections to amending this to change the venue if both parties would agree it could be held elsewhere. Mr. Loendorf stated that he had no objection to that.

There being no further questions or comments, the hearing was closed.

CONSIDERATION OF HOUSE BILL 368:

This is an act to revise the reporters' confidence act, etc. Representative Ann May Dussault gave an explanation of this bill.

Mike Meloy, representing the Montana Press Association and the Lee Newspapers, stated that this bill is designed to correct the paradox which occurred when the district court opinion said that this act only protects the reporter. He stated that it is difficult to know when information

belongs to the news agency and when it belongs to the reporter. He stated that all tape recorders are the property of the news agency and he says that the present law only protects the reporter and if he discusses that information with his boss, the boss can be made to testify.

Bill Merrick, representing the Montana Broadcasters, gave a statement in support of this bill. He said that the type of equipment that is needed cannot be afforded by the reporter themselves.

There were no further proponents and no opponents.

There being no questions or comments, the hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 705:

This is an act to amend section 2-3-203, MCA, to require that a meeting of a subcommittee of a public agency be open to the public. Representative Yardley stated that this amends the open meeting law and that if an agency wants to keep anything private that the best way to do it is to have a subcommittee.

Hal Stearnes, representing the Montana Press Association, stated that there have been many subterfuges to keep the public knowing from what is going on. He stated that he thought this would close a loophole.

Wayne Buchanan, representing the Montana School Boards Association, proposed an amendment and stated that he would like to speak on the amendment. He stated that first of all, it has to be a committee appointed by the public agency. He said this would prevent the casual meeting of the school board and they felt that this was a good bill and hope to get a do pass.

Mike Meloy, representing the Lee Newspapers and the Montana Press Association gave a statement in support of this bill.

Bill Merrick, representing the Montana Broadcasters Association, said they supported this bill.

Senator Lensink stated that he thought this completely changes the bill and he is against it. Senator Olson said what if it is held in Ekalaka, if the defendent wants the hospital administrator, some nurses, etc., to testify than he has to haul them all here. Senator Lensink said that the board of medical examiners is very unlikely to get after a doctor anyway. Senator Turnage said that when they do, they have always prejudged his case and that really puts him at a disadvantage. Senator Olson stated that he was on the board of examiners for nine years and they bring him in and have a confrontation. Senator Turnage stated that they do not do that any more.

A vote was taken on the motion and it carried with Senators Van Valkenburg and Lensink voting no.

Senator Turnage moved that this bill be concurred in as amended. The motion carried.

DISPOSITION OF HOUSE BILL 368:

Senator O'Hara offered some amendments.

Mr. Marc Racicot from the attorney general's office stated that they asked him to come up and he explained some types of things that should not be included in the shield statute. Senator Turnage stated that he was in complete agreement with the attorney general's office. He said that on page 2, it says if he comes forth and testifies he waives the privelege of 26-1-902. He said that the point is if a newspaper man comes forward and volunteers to testify, he better testify by law and he stated that they went through this a couple sessions ago. He stated that the last sentence is a problem, "except as provided in this subsection, the provisions of 26-1-902 may not be waived."

Mr. Meloy said that this subsection was added last session by amendment and if you disseminate the news and give part of a news story, you do not waive the other part. He stated that when you voluntarily come forward to waive it, he thinks the last sentence becomes a real technical thing. Senator Towe said what you are worried about is if he reveals one source, that is not a waiver of the other, but if he comes into court voluntarily that it is - it is wavied.

Senator Turnage asked what the present state of the law is and Mr. Meloy stated that under district court, the report shield law only applies to the reporter - it does not apply to his boss. He said that if a reporter gives information to his boss, his boss can be required to produce it and; he said that information that is on tapes belongs to the business as the tapes belong to the business.

Senator Brown moved that the bill be concurred in. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 705:

Senator Van Valkenburg moved that the bill be concurred in. The motion carried unanimously.

DISPOSTION OF HOUSE BILL 836:

Senator Towe stated that this bill does not do what they intended it to do - not at all. He said that he would like to eliminate strict liability in this bill and he gave an example of a person drinking who is injured. He stated let's put contributory negligence back into the bill the way it ought to be. He further said that he found sections 8 and 9 most objectionable and what they really meant was limited liability to the passenger.

Senator Brown suggested that they read the Sunday case, as he would really like to know all the facts.

Senator Lensink said that slopes are not suppose to be as smooth as a billard table and ski areas cannot be expected to do that.

Senator Towe said that he is a little bothered about hidden hazards - if they know about it, they should mark the area. Senator Van Valkenburg stated that he would be more comfortable with the bill if it said that the assumption of risk applies to downhill skiers.

Senator Towe said that if an individual comes along in a ski area and they left a high stump, it snowed and some skier came plowing into that, that they should have some liability.

HB 348

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 26-1-902, MCA, is amended to read:

26-1-902. Extent of ~~reporters'~~ privilege. (1) Without his or its consent no person ~~engaged, or who was so engaged at the time the information sought was procured, in the work of or connected with or employed by~~ including any newspaper, magazine, press association, news agency, news service, radio station, television station, or community antenna television service or any person connected with or employed by any of these for the purpose of gathering, writing, editing, or disseminating news may be examined as to or may be required to disclose any information obtained or prepared or the source of that information in any legal proceeding if the information was legally gathered, received, or processed in the course of his employment.

(2) A person engaged as in subsection (1) may not be adjudged in contempt by a judicial, legislative, administrative, or any other body having the power to issue subpoenas for refusing to disclose or produce the source of any information or for refusing to disclose any information obtained or prepared in legally gathering, receiving, or processing information in the course of his ~~employment~~ or its business.

Section 2. Section 1 does not apply if the information obtained consists of tangible or real evidence of a crime.

Section 3. Section 26-1-903, MCA, is amended to read:

~~26-1-903. Waiver of privilege. (1) Dissemination, except as provided in subsection (2), in whole or in part~~

does not constitute a waiver of provisions of 26-1-902.

26-1-903. Waiver of privilege. (1) Disclosure by dissemination or otherwise of the source of the information or the information constitutes a waiver of the provisions of 26-1-902 to the extent that the source or information is disclosed. Waiver of the provisions of 26-1-903 by the source of that information constitutes a complete waiver of the provisions of 26-1-903.

HOUSE BILL NO. 368

INTRODUCED BY DUSSAULT, HUENNEKENS

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE REPORTERS' CONFIDENCE ACT; AMENDING SECTIONS 26-1-901, 26-1-902, AND 26-1-903, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

SECTION 1. SECTION 26-1-901, MCA, IS AMENDED TO READ:

"26-1-901. Short title. This part shall be known and may be cited as the "Reporters'---Confidence Media Confidentiality Act"."

Section 2. Section 26-1-902, MCA, is amended to read:

"26-1-902. Extent of reporters' privilege. (1) Without his or its consent no person ~~engaged, or who was so engaged at the time the information sought was procured, in the work of or connected with or employed by~~ including any newspaper, magazine, press association, news agency, news service, radio station, television station, or community antenna television service or any person connected with or employed by any of these for the purpose of gathering, writing, editing, or disseminating news may be examined as to or may be required to disclose any information obtained or prepared or the source of that information in any legal proceeding if the information was gathered, received, or processed in the course of his employment OR ITS BUSINESS.

(2) A person engaged as DESCRIBED in subsection (1) may not be adjudged in contempt by a judicial, legislative, administrative, or any other body having the power to issue subpoenas for refusing to disclose or produce the source of any information or for refusing to disclose any information obtained or prepared in gathering, receiving, or processing information in the course of his employment or its business."

Section 3. Section 26-1-903, MCA, is amended to read:

"26-1-903. Waiver of privilege. (1) Dissemination, except as provided in subsection (2), in whole or in part does not constitute a waiver of provisions of 26-1-902.

(2) If the person claiming the privilege voluntarily offers to testify OR TO PRODUCE THE SOURCE, with or without having been subpoenaed OR ORDERED TO TESTIFY OR PRODUCE THE SOURCE, before a judicial, legislative, administrative, or other body having the power to issue subpoenas OR JUDICIALLY ENFORCEABLE ORDERS, he or it waives the provisions of 26-1-902. Except as provided in this subsection, the provisions of 26-1-902 may not be waived."

-End-

REFERENCE BILL